

Land Warfare Studies Centre

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PRIVATE MILITARY COMPANIES AND MILITARY OPERATIONS

by Lieutenant Colonel Ian Wing, Ph.D

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Introduction

Private military companies (PMC) form an increasingly prominent element of military operations. PMC provide a range of services including catering, logistics, administration, training, intelligence, aviation, close personal protection, keypoint security and convoy security. Some PMC also possess the capability to undertake offensive combat operations.

Like other Coalition forces engaged in the Global War on Terrorism, the Australian Defence Force (ADF) is increasingly reliant on PMC for support during operations. Yet the employment of PMC raises important questions relating to the status of national armed forces; the reputation and reliability of PMC; applicability of the laws of armed conflict; national laws and accountability; and command, control and interoperability. The management of these and other challenges contingent on the use of PMC forms the central focus of this working paper.

This paper is presented in four parts. The first part traces the development of PMC from their mercenary antecedents through to today's corporate businesses. The second part examines contemporary PMC in military operations, focusing on the issues they generate. The third part provides the paper's conclusion and offers a number of recommendations. The fourth and final part comprises an extensive bibliography, with annotations alongside selected recent references to assist further research.

Development

The antecedents of the armed personnel provided by modern PMC were commonly referred to as ‘mercenaries’. The first part of this working paper describes the history of mercenarism through to the development of today’s PMC. The paper’s initial discussion focuses on the key issue of terminology.

Terminology

The term mercenary entered the English language in the fourteenth century and is derived from the Latin *mercenarius*, which originally meant ‘working merely for monetary or other reward; actuated by self-interest’. Since the sixteenth century this term has specifically referred to ‘soldiers serving in a foreign army’.¹ For the purposes of this discussion, this working paper uses David Isenberg’s enduring definition of mercenaries as: ‘non-nationals hired to take direct part in armed conflicts’.²

The word ‘mercenary’ contains a pejorative element that has largely arisen for two reasons. The first of these is linked to the notion that a mercenary is a ‘...hired professional soldier who fights for any state or nation without regard to political interests or issues’.³ Such employment contradicts the ethos that military service should have moral objectives. Implicit in this is the suspicion that those employed in this apparently amoral manner may also stray into immoral practices because they already operate outside the normal boundaries of society. Secondly, the general revulsion against the taking of human life has contributed to the belief that homicide is acceptable only in strictly defined circumstances. These include self-defence, the defence of others and the defence of one’s nation—but they do not include killing for

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- 1 *The Shorter Oxford English Dictionary on Historical Principles*, Clarendon Press, Oxford, 1983, Vol. 2, p. 1308; *The Concise Oxford Dictionary*, 5th Edition, Clarendon Press, Oxford, 1964, p. 760; *The Macquarie Concise Dictionary*, 2nd Edition, The Macquarie Library, Macquarie University, p. 604.
 - 2 D Isenberg, *Soldiers of Fortune Ltd: A Profile of Today’s Private Sector Mercenary Firms*, Center for Defense Information Monograph, November 1977, <<http://www.cdi.org/search?NS-search-page+document&NS-rel-doc-name+/issues/mercenaries/>>, accessed 12 November 1998, p. 2.
 - 3 *Encyclopaedia Britannica*, Encyclopaedia Britannica Inc., Chicago, 1985, ‘Micropaedia’, Vol. 8, p. 27.

financial reward. Thus, mercenarism resonates powerfully in public perception and its dark implications tend to undermine sensible debate. This was amply illustrated in the heated response of the Australian media to the employment of Sandline mercenaries in Papua New Guinea in 1997.⁴

A review of military history indicates that not all mercenaries are viewed with disdain. Units of foreign troops which are integrated into national armed forces—such as the Gurkhas of the British Army and the French Foreign Legion—have become ‘acceptable mercenaries’. Similarly, with the advent of corporate mercenarism and, more recently, the rise of PMC, hired soldiers have become broadly acceptable elements of the Global War on Terrorism. PMC are quick to capitalise on this, and spokesmen for PMC are generally at pains to distance themselves from any association with the ‘mercenary’ label. Terms such as ‘security professional’, ‘military professional’, ‘defence consultant’ and ‘defence contractor’ are the preferred titles of today’s PMC.

Notwithstanding the often unfavourable image of mercenaries, this paper adopts an evidence-based approach to the issue. PMC have become an important element of recent military operations and this discussion will focus on why this is likely to be an enduring role. A consideration of the historical origins of the PMC is essential to achieve a mature understanding of this modern phenomenon.

Early history

While mercenaries have been employed throughout classical history, their earliest occurrence is recorded in Egypt, Mesopotamia, Israel and Persia. The Greek city states initially employed mercenaries in roles that required lengthy training such as archers, slingers and personal bodyguards. The rise of mercenarism in Greece also influenced the development of the Greek language with the Greek words for mercenary (*misthophoros*), foreigner (*xenos*), and soldier (*stratiotes*) becoming virtually synonymous. Mercenary demands for pay and employer demands for binding oaths of loyalty were troublesome issues throughout the period. Mercenaries were

⁴ I. Palmer, ‘Hiring the Rent-a-kill Brigade a high-risk Strategy for PM’, *The Sydney Morning Herald*, 25 February 1997, <<http://www.smh.com.au/daily/content/PNG/index.html>> accessed 12 November 1998; I. Palmer, ‘Top Dog of War May Soon Go into Battle’, *The Sydney Morning Herald*, 24 March 1997, <<http://www.smh.com.au/daily/content/PNG/index.html>> accessed 12 November 1998; C. Skeham, ‘Canberra Warning on Mercenaries’, *The Sydney Morning Herald*, 6 June 1997, <<http://www.smh.com.au/daily/content/PNG/index.html>> accessed 12 November 1998.

also problematic for the Greek warrior heritage which was based on volunteer citizen-soldiers rather than career mercenaries.⁵ The Peloponnesian War (431–404 BC) led to an increase in the demand for mercenaries and they eventually comprised the bulk of the army of Alexander the Great (336–323 BC).⁶

A similar pattern occurred in Rome. The Roman Army originally consisted of Roman citizen infantry supported by mercenary archers and cavalry known as auxiliaries. The Roman Navy relied almost completely on auxiliaries and slaves. Later, the Roman government found it increasingly difficult to recruit sufficient troops for its campaigns and offered citizenship to foreigners as an inducement for twenty-year contracts of enlistment. The Romans also noted the successes of Hannibal's predominantly mercenary army during the Second Punic War (221–201 BC).⁷ From 27 BC on, the Imperial Roman Army replaced its citizen-soldiers with mercenaries (who were earning citizenship) and hired auxiliaries. Foreign mercenary soldiers were preferred for use as personal bodyguards such as the Imperial Praetorian Guard as they were less likely to be swayed by local public opinion. So critical were these hired troops to the Roman fighting forces that a decline in their quality almost certainly contributed to the fall of the Western Empire in 476.⁸

During the Middle Ages, feudal rulers employed foreign professional soldiers because they were better trained than agricultural serfs called to the colours by a liege-lord.⁹ During the Hundred Years War (1337–1453), compulsory training at arms and the frequent experience of warfare reduced the need for mercenaries. Despite this trend, aristocratic warriors-for-hire, known as 'knights errant', were a feature of medieval warfare. Medieval armies also included specialist mercenary artillerymen, crossbowmen and engineers.¹⁰ Some medieval mercenaries, such as the Englishman John Hawkwood,

5 See Y Garlan, *War in the Ancient World: A Social History*, Chatto & Windus, London, 1975; and H W Parke, *Greek Mercenary Soldiers: From the Earliest times to the Battle of Ipsus*, Clarendon Press, Oxford, 1970.

6 J Warry, *Warfare in the Classical World*, St Martin's Press, New York, 1980, pp. 40–85.

7 See Garlan, *War in the Ancient World*; and B Caven, *The Punic Wars*, St Martin's Press, New York, 1980.

8 See D B Saddington, *The Development of the Roman Auxiliary Forces From Caesar to Vespasian (49 BC – AD 79)*, University of Zimbabwe, Harare, 1982; and A E R Boak, *Manpower Shortage and the Fall of the Roman Empire in the West*, Greenwood Press, Westport, Connecticut, 1955.

9 H W Koch, *Medieval Warfare*, Bison Books, London, 1978, pp. 84–85.

10 *Ibid.*, pp. 128–37, 170–71.

were widely respected for their military prowess. The French mercenary 'La Hire' was later depicted as the Knave of Hearts on French playing cards.¹¹ But most mercenaries were viewed less favourably because they failed to follow a code of chivalry. With the conclusion of the Hundred Years War many former soldiers were available for hire to the highest bidder and their methods became increasingly brutal. Swiss and German mercenaries, known as 'free booters', gained a reputation for never taking prisoners.¹²

The city states of northern Italy employed 'soldiers of fortune' or *condottieri* for their defence. The Renaissance strategist Niccolo Machiavelli regarded the *condottieri* as unreliable and advocated the use of citizens' militias instead.¹³ His fears proved justified as the *condottieri* later turned on their employers and seized control of several city states.¹⁴ Among the most successful forces of the fifteenth century were German mercenaries known as *landsknecht*, widely feared for their brutal methods and prone to desertion, especially if they were not paid promptly for their services.¹⁵ The term 'free company' described the availability of the groups for hire (and is the origin of the modern term for a military sub-unit). The Swiss Guards who provide security at the Vatican trace their origins back to the highly effective Swiss mercenaries of the fourteenth century.

Tudor England lacked a standing army and addressed this shortfall with mercenaries from the continent who were known as 'freelance'. These mercenaries were an essential element of Henry VIII's army, which invaded France in 1513 and consisted of 24,000 English citizen-soldiers and 7000 German, Dutch, Italian, Spanish, Albanian and Greek troops.¹⁶ During the fifteenth century, the personal bodyguard of the King of France was entirely populated by Scottish freelance. Irish Catholic mercenaries, known

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- 11 C Alamand, *The Hundred Years War: England and France at War c.1300-c.1450*, Cambridge University Press, Cambridge, 1988, pp. 76, 162.
 - 12 T Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Later Middle Ages*, Clarendon Press, Oxford, 1993, p. 164.
 - 13 N Machiavelli, *The Prince*, P Bondanella (ed.), M Musa (trans.), Oxford University Press, Oxford, 1984, p. 42.
 - 14 M Mallet, *Mercenaries and Their Masters: Warfare in Renaissance Italy*, The Bodley Head, London, 1974; J Keegan, *A History of Warfare*, Hutchinson, London, 1993, p. 231; Koch, *Medieval Warfare*, pp. 174–85.
 - 15 Koch, *Medieval Warfare*, pp. 191–99.
 - 16 G J Millar, *Tudor Mercenaries and Auxiliaries 1485–1547*, University Press of Virginia, Charlottesville, Virginia, 1980, pp. 44–45.

as ‘wild geese’, comprised large proportions of the armies of Spain and Flanders during the seventeenth century.¹⁷

Modern history

The Treaty of Westphalia which ended the Thirty Years War in 1648 saw the formal recognition of the nation-state and the birth of ‘modern’ international relations. The sovereign of each state had absolute power over his own territory, the ability to negotiate treaties and a monopoly over the use of force. The rise of the sovereign state did not, however, reduce the reliance of armies on mercenaries.¹⁸ The successful eighteenth-century Prussian Army of Frederick the Great was divided equally in number between Prussian citizens and mercenary *Freicorps*. Not all mercenaries in this period were employed as combat troops, however. Johan Dietz was a surgeon from Saxony who campaigned with the Prussian and Danish armies.¹⁹

The British Army continued to employ large integrated units of mercenaries until the end of the nineteenth century. The time-honoured military rank of ‘private’ has its origins in the belief that the enlistment of soldiers involved ‘private financial contracts’ between the sovereign and the recruit. In 1701 the British Army consisted of 150,000 men including 81,000 Dutch, Danish and Hanoverian mercenaries. Little had changed by the outbreak of the Seven Years War (1756–63) when the British Army comprised 97,000 men augmented by 60,000 foreign mercenaries.²⁰ The British forces during the American War of Independence (1775–83) included 30,000 mercenaries from Hesse-Kassel known as ‘Hessians’. Many battle-hardened European officers from these forces subsequently became training advisers to local armies on the Indian sub-continent.²¹

17 R A Stadling, *The Spanish Monarchy and Irish Mercenaries: The Wild Geese in Spain 1618–68*, Irish Academic Press, Dublin, 1994, p. 163.

18 For a more detailed examination of this phenomenon see J Thomson, *Mercenaries, Pirates and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe*, Princeton University Press, Princeton, 1994.

19 J Dietz (1665–1738), *Memoirs of a Mercenary*, B Miall (trans.), The Folio Society, London, 1987.

20 C Bayley, *Mercenaries for the Crimea: The German, Swiss and Italian Legions in British Service 1854–1856*, McGill-Queen’s University Press, London, 1977, pp. 4–5.

21 See S Bidwell, *Sword for Hire: European Mercenaries in Eighteenth-Century India*, John Murray, London, 1971.

The Industrial Revolution allowed nations to raise and equip large conscript armies to fight the French Revolutionary Wars (1789–99). High levels of conscription or *levee en masse* reduced the demand for mercenaries, although these elements never completely disappeared. France, for example, maintained its link with the very efficient Swiss mercenaries and hired them to establish the Foreign Legion in 1831.²²

During the Napoleonic Wars (1799–1815) the British Army was heavily reliant on foreign troops with 54,000 soldiers serving in the ‘Mercenary Corps’ of 1813. This corps comprised more than a fifth of the British Army and included the famous King’s German Legion.²³ Similarly, the British Army during the Crimean War (1853–56) employed German, Swiss and Italian legions of foreign mercenaries totalling 16,500 men.²⁴ The British Army that campaigned in New Zealand against the Maoris (1860–64) included almost 3000 Australian colonial soldiers who were rewarded with good pay and grants of land.²⁵ Harry ‘Breaker’ Morant and other Australians who served with the irregular Bushveldt Carbineers during the Boer War (1899–1902) were former Australian soldiers.²⁶

The US Army of the nineteenth century relied on foreign recruits, often impoverished newly arrived immigrants deemed unsuitable for better paid work. The campaigns against the native American Indians (1846–1891) were waged by non-citizens from Ireland, England, Scotland, Canada, Germany, France and Switzerland. The Confederate States of America also recruited European mercenaries during the American Civil War (1861–65).²⁷

The twentieth century blurred the distinction between national conscript soldiers and foreign mercenaries. During the First World War (1914–1918), the major powers used colonial troops to supplement their national conscript armies. The Spanish Civil War of 1936 saw thousands of foreign ‘volunteers’, including men from the United States, United Kingdom and Australia, fight for the Republican forces against the

22 A Mockler, *The New Mercenaries*, Sidgwick and Jackson, London, 1985, p. 21.

23 R W Gould, *Mercenaries of the Napoleonic Wars*, Tom Donovan, Brighton, 1995, p. 9.

24 Figures derived from House of Commons Sessional Papers, pp. xxvii, 151, cited in Bayley, *Mercenaries for the Crimea*, p. 149.

25 K Denton, *For Queen and Commonwealth*, Time-Life Books (Australia), North Sydney, pp. 25–32.

26 *Ibid.*, p. 158.

27 D R Rickey Jr, *Forty Miles a Day on Beans and Hay: The Enlisted Soldier Fighting the Indian Wars*, University of Oklahoma Press, Norman, Oklahoma, pp. 17–18; S Starr, *Colonel Grenfell's Wars: The Life of a Soldier of Fortune*, Louisiana State University Press, Baton Rouge, 1971.

Nationalists. These men could be classed as mercenaries under the strict definition of the term, although their motivation was generally political rather than financial.²⁸ Similarly, at the outbreak of the Second World War (1939–1945), the British armed forces included many American volunteers who offered their services prior to the US entry into the war in 1941. As the war escalated, the huge scale of the conscript armies made hired soldiers unnecessary. Nonetheless, the German and Japanese armies mobilised the inhabitants of the countries they occupied and volunteers for this service could also be defined as mercenaries.

Integrated and freelance

Integrated mercenary forces returned to prominence following the Second World War. The French Foreign Legion saw service in the independence struggles in French Indo-China (1946–54) and Algeria (1954–62), and remains an elite element of the French armed forces today. Many of these troops were veterans of service in the German Wehrmacht. The Nepalese Gurkha troops of the British Army also boast a fine reputation. They were deployed in the 1982 British campaign to retake the Falkland Islands and two battalions of Gurkhas remain on the British Army order of battle.²⁹ While both the Gurkhas and the legionnaires are integrated into their respective national armed forces, their loyalty remains problematic. The French Foreign Legion is highly respected, but its loyalty is to the Legion itself, rather than to France. The Legion's loyalty was certainly problematic in 1961 when an attempted *coup d'état* against De Gaulle's regime in Algeria was supported by the First Legion Paras (1er Rep). The coup failed and the regiment, which had been twice destroyed by enemy action in Indo-China, was immediately disbanded and its barracks razed.³⁰ Its sister regiment, 2er Rep, avoided a similar fate and remains an elite unit to this day.³¹

28 See G Jackson, *A Concise History of the Spanish Civil War*, Thames and Hudson, London, p. 174; and J C Edwards, *Airmen Without Portfolio, US Mercenaries in Civil War Spain*, Praeger, Westport, Connecticut, 1997.

29 E D Smith, *Johnny Gurkha 'Friends in the Hills'*, Arrow Books, London, 1987; C Heyman, *The Armed Forces of the United Kingdom 1996–97*, Pen and Sword Books, Barnsley, South Yorkshire, 1997, p. 96.

30 Mockler, *The New Mercenaries*, pp. 30–33; and S Murray, *Legionnaire*, Sidgwick and Jackson, London, 1978, pp. 135–42.

31 Approximately twenty Australians were serving in the French Foreign Legion in 2002. Source: author's discussions with serving legionnaires in Africa.

The post-colonial struggles of Africa during the 1960s and 1970s saw the resurgence of 'freelance' mercenarism. Military vacuums developed in Africa as the national forces of the colonial powers withdrew and were replaced by poorly led local troops. During the 1960s, several hundred European, South African and Rhodesian mercenaries served in the former Belgian Congo. A force of 500 soldiers known as *les affreux* (the 'terrible ones') which included former soldiers from 1er Rep, served under Frenchman Bob Denard and Belgian Jean Schramme in support of the Katangese rebellion led by Moïse Tshombe against Prime Minister Patrice Lumumba and United Nations (UN) troops from Ireland, Sweden, India and Africa. This mercenary force included French, Belgian and British mercenaries.³²

In 1964, another large mercenary force of 250 British 'volunteers' known as 5 Commando and led by 'Mad Mike' Hoare, an Irish businessman, and later John Peters, formerly of the Rhodesian Special Air Service (SAS), fought against the Simba rebellion in support of Tshombe who had become prime minister.³³ The atrocities perpetrated by the Simbas won Hoare's troops much favourable international publicity. Hoare also cooperated with UN troops in operations to rescue Europeans from the Simbas. The security situation in the Congo then deteriorated further and several mercenary commando units, known as 'white giants', fought for General Mobutu, who had overthrown Tshombe in 1965. Two years later, Denard and Schramme led the ill-fated 'mercenaries' revolt' against Mobutu in support of Tshombe. Many mercenaries were massacred, and the surviving European mercenaries were evacuated by the Red Cross.³⁴ Biafra's attempted secession from Nigeria (1967–70) provided further opportunities for mercenaries on both sides including the German Rolf Steiner, Belgian Marc Goosens and Welshman 'Taffy' Williams. Australian pilots employed by the Nigerians flew combat missions in Canberra Bombers and MIG 21s. Steiner trained Sudanese rebels from 1969 until 1970 when he was arrested and tried in Khartoum. Denard, who had maintained links with French intelligence, trained President Bongo's Gabonese Presidential Guard and used Gabon as a base for incursions into Angola.³⁵

32 See Mockler, *The New Mercenaries*; and T Geraghty, *Who Dares Wins: The Story of the SAS 1950–1980*, Fontana/Collins, London, 1981, pp. 113–14.

33 See M Hoare, *Congo Mercenary*, Robert Hale, London, 1967; and J Puren, *Mercenary Commander*, Galago, Alberton, 1986.

34 See Mockler, *The New Mercenaries*.

35 Ibid.

In 1975 John Banks and Dave Tomkins established a company known as Security Advisory Services (which also used the acronym 'SAS') to assist a CIA-financed insurrection in post-colonial Angola. President Agostino Neto's MPLA (Popular Movement for the Liberation of Angola) government was threatened by the FNLA (National Front for the Liberation of Angola) led by Holden Roberto and UNITA (National Union for the Total Independence of Angola) led by Jonas Savimbi.³⁶ The operation involved over 100 British and Americans, some of whom were competent soldiers, although others were little more than murderers. After three months of poorly organised operations, many of the mercenaries fled to the Congo while others were captured. Following an MPLA show trial, thirteen captured mercenaries were judged to have forfeited the protection of the Geneva Conventions and were convicted of war crimes.³⁷ Four of the men were executed, including Costas Georgiou who used the *nom de guerre* 'Colonel Callan'.³⁸

The definition of mercenaries was also blurred in the 1960s and 1970s by the movement of officially contracted military personnel between governments. British officers and soldiers 'seconded on loan service' from their regiments served the Sultan of Oman and other Middle Eastern rulers alongside mercenaries on private contracts. Troops from Soviet client nations such as Cuba operated as 'advisers' in Africa. Unsurprisingly, these men were described as 'mercenaries' by their opponents in conflicts in Somalia/Ethiopia (1977–78) and Eritrea (1977–81). The allied forces deployed to support South Vietnam were also described as 'mercenaries' by their critics.³⁹ The Rhodesian armed forces recruited mercenaries, including dozens of Australians, during the counter-insurgency war (1964–79). The Rhodesians offered

36 See Mockler, *The New Mercenaries*; J Banks, *The Wages of War: The Life of a Modern Mercenary*, Leo Cooper, London, 1978; C Dempster and D Tomkins, *Firepower*, Corgi, London, 1978; J Stockwell, *In Search of Enemies: A CIA Story*, Futura Publications, London, 1979; S Hougan, *Spooks: The Private Use of Secret Agents*, W H Allen, London, 1979; and J Bloch and P Fitzgerald, *British Intelligence and Covert Action*, Brandon, Kerry, Republic of Ireland, 1984.

37 Dempster and Tomkins, *Firepower*; E Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application*, Kluwer Academic Publishers, Dordrecht, 1992, pp. 114–16.

38 See Mockler, *The New Mercenaries*; Dempster and Tomkins, *Firepower*; W Burchett and D Roebuck, *The Whores of War: Mercenaries Today*, Penguin Books, Harmondsworth, Middlesex, 1977; and F Forsyth, *The Dogs of War*, Corgi Books, London, 1974.

39 See R Blackburn, *Mercenaries and Lyndon Johnson's 'More Flags': The Hiring of Korean, Filipino and Thai Soldiers in the Vietnam War*, McFarland and Co., Jefferson, North Carolina, 1994; and M T Klare, *War Without End: American Planning for the Next Vietnams*, Alfred A Knopf, New York, 1972.

only the standard pay rates to their foreign troops, many of whom were motivated by the fight against terrorism and therefore not lured by the lucrative contracts offered in other African conflicts.⁴⁰ The well-known adage 'one man's terrorist is another man's freedom fighter' had acquired a new form: 'one man's mercenary is another man's professional soldier'.

Between 1977 and 1981, three operations intended to overthrow small national governments again raised the profile of freelance mercenarism. In 1977 Denard led a force of ninety men in the attempted overthrow of President Kerekou's regime in Benin (Dahomey).⁴¹ Ten months later Denard led approximately sixty mercenaries in a successful coup in the Comoros Islands. President Ali Soilih was 'shot while trying to escape' and the former President, Ahmed Abdallah, who had been deposed in 1975 with assistance from Denard, was restored to power. Denard and his men settled into a comfortable life in the tiny nation while abortive plans were made for their ouster by Australians based in Perth (who were prosecuted in 1983).⁴² In 1989, Abdallah was murdered, probably by Denard, who was then forced to flee to South Africa. He attempted a further takeover of the Comoros in 1995 but was arrested by French troops and imprisoned by the French government for ten months.⁴³ In 1981 Hoare launched an unsuccessful attempt to overthrow the government of the Seychelles with the tacit support of South Africa. He led a party of forty-seven heavily disguised soldiers who arrived in the Seychelles on a civil flight. The men were detected and forced to commence their assault prematurely. The following day they returned to South Africa in a commandeered Air India Boeing 727, having failed in their mission. They were later tried in South Africa and convicted of hijacking, serving up to four years in prison. Six men who were left behind in the Seychelles were tried and convicted of treason. All received death sentences which were later commuted to two-year prison sentences.⁴⁴

40 See C Cocks, *Fireforce: One Man's War in the Rhodesian Light Infantry*, Galago, Alberton, 1988.

41 See Mockler, *The New Mercenaries*.

42 In 1984, three people were convicted in Perth with offences under the Crimes (Foreign Incursions and Recruitment) Act. See Annex A.

43 J Follain, 'French Mercenary Not Finished Yet', *Washington Times*, 2 September 1996, p. 15; D Isenberg, 'French Mercenary Denard Ordered to Stand Trial', <<http://www.infoseek.com/Content?arn=a18771BY603reullb-19971104&qt=mercenaries&lk=noframes&col=NX&kt=A&ak=news1486>> accessed 12 November 1998; B Denard, 'L'Histoire', <<http://www.bobdenard.com/bobhisto.htm>>.

44 See M Hoare, *The Seychelles Affair*, Paladin Press, 2008; Mockler, *The New Mercenaries*; Puren, *Mercenary Commander*.

Corporate

The forerunners of today's PMC were referred to as 'corporate mercenaries' and emerged in the 1970s when companies appeared which functioned ostensibly as commercial businesses rather than paramilitary groups. These companies had business offices in capital cities with legitimate bank accounts and apparently normal trading practices. Despite their efforts to portray themselves simply as businesses like any other, these companies usually continued to work outside the mainstream business world. From 1967, David Stirling, the highly respected founder of the British Special Air Service, arranged mercenary contracts for former British Army personnel through his firm Watchguard, which specialised in security and bodyguard services for post-colonial leaders. During the same period, Keeni Meeni Services (KMS) provided armed bodyguards to British diplomatic personnel serving overseas.⁴⁵

In 1989 Eben Barlow formed Executive Outcomes (EO), which became the best known mercenary company of this period. EO was based in South Africa, with a small central staff coordinating contracted units of former South African Defence Force personnel. In 1992, the Angolan state oil company hired EO to protect its oil wells from rebel attack. EO's success in this venture spawned further contracts leading Angolan troops in combat against the rebels.⁴⁶ In 1995, EO was contracted by the government of Sierra Leone where 300 EO soldiers defeated a rebellion and stabilised the country.⁴⁷ EO routinely utilised a range of assets including Boeing 727 transport aircraft, MIG-23 fighter aircraft, Mi-8, Mi-17 and Mi-24 helicopters, and BTR-50 armoured personnel carriers. At its zenith, EO had 2000 personnel on call.⁴⁸

45 See A Hoe, *David Stirling: The Authorised Biography of the Founder of the SAS*, Little, Brown and Company, London, 1992, pp. 371–75; Banks, *The Wages of War*, pp. 61–65; P de la Billiere, *Looking for Trouble: An Autobiography – from the SAS to the Gulf*, HarperCollins, London, 1994, pp. 297–313; D Shearer, *Private Armies and Military Intervention*, Adelphi Paper 316, International Institute for Strategic Studies, London, 1998, p. 36; and T Geraghty, *Who Dares Wins: The Story of the SAS 1950–1980*, pp. 122, 134–36.

46 EO website, <<http://www.eo.com/about/p1.html>> accessed 12 November 1998; 'Africa's New Enforcers', *Independent*, Reuters Information Services, 16 September 1996, p. 2; H Howe, 'Global Order and Security Privatisation', *Strategic Forum*, Institute for National Strategic Studies, International Defense University, No. 140, May 1998, p. 2; Correspondence between EO and the author, 19 November 1998.

47 Isenberg, *Soldiers of Fortune Ltd*, pp. 4–5.

48 Ibid., pp. 4, 6; Shearer, *Private Armies and Military Intervention*, pp. 53–54; H Howe, 'South Africa's 9-1-1 Force', *Armed Forces Journal International*, November 1996, pp. 38–39.

Under pressure from the South African government, EO was disbanded in 1998. Prior to its closure it was contracted by Sandline International to assist the Papua New Guinea Defence Force (PNGDF) to quell a rebellion on Bougainville. Under pressure from Australia, the advance party was sent home without starting its mission and its leader, Tim Spicer, was expelled from PNG. The controversy over the mercenary contract and corrupt payments to those associated with the arrangement, led to the fall of the PNG government and the sacking of its Defence Chief.⁴⁹ Half of the US\$36 million contract had already been paid, and an international tribunal ruled that PNG should pay the balance. Two Mi-17 and two Mi-24 helicopters, purchased by the PNGDF for the operation, were impounded by Australia at the behest of the PNG government.⁵⁰ While the ability of the Sandline force to resolve the situation on Bougainville was debatable, their previous successes indicate that this was not out of the question.⁵¹ Tim Spicer returned to the United Kingdom and is now the CEO of Aegis, one of the most prominent PMC in Iraq.⁵²

The best known US corporate mercenary organisation is Military Professional Resources Incorporated (MPRI) which was founded in 1987. Its leadership includes a number of retired US generals including a former Chief of the US Army. By the turn of the century, MPRI had over 400 employees and between 2000 and 7000 personnel on call. Lieutenant General Harry Soyster, the Vice President of MPRI, insists that MPRI provides technical training rather than fighting forces: ‘... no one at MPRI has ever

49 See M O’Callaghan, *Enemies Within – Papua New Guinea, Australia, and the Sandline Crisis: The Inside Story*, Doubleday, Sydney, 1999; C Skehan, ‘PNG Launches Mine Plan Amid New Claims Over Hired Guns’, *The Sydney Morning Herald*, 3 March 1997, <<http://www.smh.com.au/daily/content/PNG/index.html>> accessed 12 November 1998; and I Palmer, ‘Singirok Admits Taking Arms Cash’, *The Sydney Morning Herald*, 14 July 1997, <<http://www.smh.com.au/daily/content/PNG/index.html>> accessed 12 November 1998.

50 P Cronau, ‘Mercenaries: Dirty Diggers – Australians Implicated’, *Asia-Pacific Network*, <<http://acj.uts.edu.au/cafeapacific/resources/aspac/cronau.html>>; T Wright, ‘Australia Stuck With Expensive Sandline Hardware’, *The Sydney Morning Herald*, 3 April 1997, <<http://www.smh.com.au/daily/content/PNG/index.html>> accessed 12 November 1998; S Dorney, *The Sandline Affair: politics and mercenaries and the Bougainville Crisis*, ABC Books, Sydney, 1998, p. 263; T Chappell, ‘PNG to Pay Sandline’, *Courier-Mail*, 19 October 1998, p. 14.

51 ‘Project Contravene’, December 1996, Appendix Document 1; S Dinnen, R May and A J Regan, *Challenging the State: The Sandline Affair in Papua New Guinea*, National Centre for Development Studies, Research School of Pacific and Asian Studies, Australian National University, Pacific Policy Paper No. 30, Canberra, 1997, pp. 150–75.

52 J Swain, ‘Making a Killing’, *The Weekend Australian Magazine*, 3–4 December 2005, pp. 30–35.

carried a gun, nor will we ever carry a gun'.⁵³ MPRI operates with the blessing of the Pentagon and provides a range of military and security services which have included monitoring the Serbian border while training Bosnian and Croatian troops. In the United States, MPRI provides instructors and doctrine writers for the US Army and a range of military and law enforcement training services.⁵⁴

PMC and the Global War on Terror

The al-Qaeda terrorist attacks in the United States on 11 September 2001 led to the declaration of the US Government's Global War on Terror (GWOT). This shift in US policy precipitated a rapid expansion in US military operations, including the invasions of Afghanistan in 2001 and Iraq in 2003.

The GWOT prompted an unprecedented increase in the number, size and operations of corporate mercenary companies.⁵⁵ Since 2001 these organisations have generally been referred to as private military companies (PMC), private security companies (PSC) and private military and security companies (PMSC).⁵⁶ The earlier terms of 'defence consultant' and 'defence contractor' also referred to PMC staff members. This paper uses the umbrella term of PMC to cover all corporate military personnel performing missions in the GWOT.

The number of PMC personnel supporting the US armed forces has increased rapidly during the GWOT. During the 1991 Gulf War there were fifty-five US troops to each supporting contractor. Seventeen years later, in 2008, private contractors working

53 Isenberg, *Soldiers of Fortune Ltd*, p. 9; Shearer, *Private Armies and Military Intervention*, p. 56; 'Conflict Inc.: Selling the Arts of War', *America's Defense Monitor*, Center for Defense Information, 1997, <<http://www.cdi.org/search?NS-search-page=document&NS-rel-doc-name=/adm/Transcripts/>> accessed 12 November 1998, p. 4.

54 Shearer, *Private Armies and Military Intervention*, pp. 56–63; Isenberg, *Soldiers of Fortune Ltd*, pp. 9–10; M H Milstein, 'GIs in Gym Suits', *Soldier of Fortune*, May 1998, pp. 57–67; MPRI website, <<http://www.mpri.com/esite/>> accessed 12 November 1998.

55 For first-hand descriptions of these operations see J Geddes, *Highway to Hell: An ex-SAS soldier's account of the extraordinary private army hired to fight in Iraq*, Century, London, 2006; and B Shepherd, *The Circuit: An ex-SAS soldier, a secretive industry, the war on terror, a true story*, Macmillan, London, 2008.

56 The issue of the reluctance of PMC to be associated with the term 'mercenary' is examined in S Percy, *Mercenaries: The History of a Norm in International Relations*, Oxford University Press, Oxford, 2007.

in Iraq outnumbered US troops on active duty. These figures are unlikely to surprise those who know that police officers in the United States, United Kingdom and Australia are already outnumbered by their respective local private security industries. Tony Geraghty notes that the combined total of PMC forces in Iraq shortly after the 2003 invasion outnumbered the British forces which constituted the second-largest fighting force in the country after the US armed forces.⁵⁷ Official testimony in 2008 suggested that replacing PMC with military personnel in Iraq would require the manpower equivalent of nine brigades.⁵⁸ By 2008, the US Government had spent US\$85 billion on contracted services in Iraq and 310 PMC had been awarded contracts.⁵⁹ Peter Singer describes the allied forces in Iraq as the 'Coalition of the billing'.⁶⁰

Matan Chorev portrays the contracted companies in Iraq as '... complex and multi-faceted'. He adds that:

The industry is essentially made up of three major types of service-providers
– Nonlethal Service Providers (NSPs), Private Security Companies (PSCs), and
Private Military Companies (PMCs).

Chorev argues that the vast majority of corporate personnel operating in Iraq are involved in routine administrative tasks such as catering, laundry and cleaning.⁶¹ This view sees PMC ultimately as 'force multipliers' which release national armed forces to concentrate on their core business of offensive combat operations. Following the same approach, industry spokesman Doug Brooks argues that most PMC personnel are non-combatants. He further emphasises that, of the 150,000 foreign private contractors working in Iraq, only 8000 are so-called 'shooters' providing a combatant capability. These men work alongside a further 20,000 armed Iraqi security guards. Brooks points

57 T Geraghty, *Guns for Hire: The Inside Story of Freelance Soldiering*, Portrait, London, 2007, pp. 3–4.

58 N Hodge, 'High risk, high return?', citing Jack Bell, US Deputy Under Secretary for Defense for Logistics and Readiness, *Jane's Defence Weekly*, 9 July 2008, pp. 24–27.

59 N Hodge, 'US counts cost of contractor support in Iraq', citing a Congressional Budget Office report released on 12 August 2008, *Jane's Defence Weekly*, 20 August 2008, p. 13; J Glanz, 'Report on Iraq Lists 310 Contractors', *The New York Times*, 28 October 2008, <<http://www.nytimes.com/2008/10/29/world/middleeast/29protect.html>> accessed 5 January 2010..

60 P Singer, 'Outsourcing War', *Foreign Affairs*, Vol. 84, No. 2, March/April 2005, pp. 119–32.

61 M Chorev, quoted in A Venter, *War Dog – Fighting Other People's Wars: The Modern Mercenary in Combat*, Casemate, Philadelphia, 2006, pp. 590–91.

out that the foreign operatives are contracted to perform strictly defensive missions rather than offensive operations.⁶²

PMC pay rates are far higher than those of national armed forces. During 2003, Tier One special forces operators (from the United States, United Kingdom and Australia) earned up to US\$2000 a day, although this has gradually fallen to approximately \$700 a day.⁶³ Far lower rates—around \$50 a day—were paid to employees from non-Western countries (known as ‘third country nationals’ or TCNs) and Iraqis.

The functions performed by PMC include combat support such as intelligence. As a result, seventy per cent of the US Government’s intelligence budget is now spent on outsourced contracts within all levels of the intelligence community.⁶⁴ This applies particularly to the tactical level where contractors work as interrogators, linguists and intelligence analysts in roles that were previously regarded as ‘essentially governmental’ (meaning that the work could previously only be performed by government employees).

Some PMC participating in military operations have experienced serious problems and very negative publicity. Four operatives from the US PMC Blackwater were murdered in Fallujah in 2004 and their bodies suspended from a bridge. Even more disturbingly, in 2007, a group of Blackwater operatives opened fire in Nisour Square, Baghdad, killing seventeen Iraqi civilians.⁶⁵ Despite these setbacks, by the end of 2007, Blackwater had 2300 personnel deployed in nine countries including the US where Blackwater armed guards formed part of the response to Hurricane Katrina in New Orleans. Blackwater is also notable for creating a subsidiary known as ‘Greystone’, a brigade-sized combat force suitable for deployment on UN peace operations.⁶⁶

Freelance mercenarism declined in significance during the GWOT, but has by no means completely disappeared. In 2004, a unit of sixty-four British and South African

62 ‘Private Warriors’, Transcript, *Frontline*, 21 June 2005, <<http://www.pbs.org/wgbh/pages/frontline/shows/warriors/interviews/brokks.html>>. accessed 5 January 2010.

63 S Fainaru, *Big Boy Rules: America’s mercenaries fighting in Iraq*, Da Capo Press, Philadelphia, 2008, p. 136.

64 T Shorrock, *Spies for Hire: The secret world of intelligence outsourcing*, Simon and Shuster, New York, 2008, pp. 13, 19–20.

65 For detail on these incidents see J Scahill, *Blackwater: The Rise of the World’s Most Powerful Mercenary Army*, Nation Books, New York, 2007.

66 S Armstrong, *War PLC: The Rise of the New Corporate Mercenary*, Faber and Faber, London, 2008, pp. 220–21; Scahill, *Blackwater*, pp. 43, 59–60, 433–37.

mercenaries was arrested by Zimbabwean authorities while preparing to overthrow the government of Equatorial Guinea. Their leader, former British SAS officer Simon Mann, was sentenced to thirty-four years in prison before receiving a presidential pardon in November 2009.⁶⁷ Mann claimed that his operation had the tacit support of a range of foreign governments (including the United Kingdom) but none came to his aid following his arrest.⁶⁸

The next phases of the Global War on Terror (under whatever name it will be known) are likely to see ongoing counterinsurgency and counter-terrorism operations for many years. The recent drawdown in Iraq has meant that the huge demand for PMC services, known as the 'Iraq bubble', has all but burst. The global financial crisis has also led to reductions in spending on PMC services. The PMC industry is responding to these changes by investigating potential new markets including Afghanistan, peace operations, international humanitarian operations and domestic security operations around the world.

Reasons for expansion

There are seven primary reasons for the growth of the PMC industry since the end of the Cold War and its exponential expansion during the GWOT. The first of these is linked to the decline in standing military forces during the post-Cold War drawdown of the 1990s. Post-Apartheid South Africa also discharged many troops, adding to the large numbers of trained men available for corporate recruitment. The GWOT has not led to a major expansion in national armed forces. Instead, relatively small existing national armed forces are being called on to complete more and longer tours of combat duty. Supplementation by reserve forces is occurring, but is limited by the difficulty of deploying Reservists for long periods away from their normal employment. PMC offer trained personnel who can address this shortfall.

Second, modern military forces are increasingly adopting the business terminology and practices of the corporate world. The privatisation of war is arguably the logical

67 H Siddique and G Tremlett, 'Simon Mann pardoned over role in Equatorial Guinea coup plot', *The Guardian*, 2 November 2009, <<http://www.guardian.co.uk/world/2009/nov/02/simon-mann-pardoned-equatorial-guinea>> accessed 5 January 2010.

68 See A Roberts, *The Wonga Coup: The British mercenary plot to seize billions in Africa*, Profile Books, 2006; 'Mann sentenced in E Guinea plot', *BBC News*, <<http://www.newsvote.bbc.co.uk/mpapps/pagetools/print/wns.bbc.co.uk/2/hi/africa/7493717>> accessed 5 January 2010.

outcome of the 1980s free market philosophies of Margaret Thatcher and Ronald Reagan.⁶⁹ The outsourcing of services is increasing and this includes military and security capabilities. PMC are ostensibly normal businesses and this façade facilitates their close association with legitimate governments. Like any other business, PMC deal with contractual bottom lines and thus their cost can be accurately predicted. National armed forces, on the other hand, tend to routinely exceed their budget, particularly during combat operations. Thus, the efficient employment of PMC may indeed save governments money. Comparisons of the high cost of the UN operations in Angola, the inefficient Angolan military forces operations and the successful on-budget EO operations demonstrate all too clearly the cost-effectiveness of PMC.⁷⁰

Third, the Western nations of the post-Cold War world are developing characteristics described by Charles Moscos during the 1990s as marking a transition towards 'The Warless Society'. The former military paradigm of massed armed forces has been transformed into that of a smaller, well-paid professional and technical force.⁷¹ Military forces are also undertaking many new non-combatant missions, which include law enforcement, peacekeeping and humanitarian relief.⁷² This trend may ultimately erode the combatant capability of national armed forces and thus provide PMC with further opportunities in offensive combatant roles.

Fourth, Western society is increasingly unwilling to expose its citizens, even volunteers in the professional military, to the risk of death. Edward Luttwak described this phenomenon in his article 'Where are the Great Powers? At Home with the Kids':

Parents who commonly approved of their sons' and daughters' decisions to join the armed forces ... now react with astonishment and anger when their

69 Armstrong, *War PLC*, p. 247.

70 The UN operations cost over \$1 million a day for two years, Angolan military expenditure in 1994–95 was \$678 million and yet EO fulfilled its contract for \$60 million. Source: *World Military Expenditures and Arms Transfers 1996*, US Arms Control and Disarmament Agency, July 1997, p. 58, cited in Isenberg, *Soldiers of Fortune Ltd*, p. 11.

71 C C Moscos, 'Armed Forces in a Warless Society', *Forum International*, No. 13, 1992, pp. 3–10, cited in I. Freedman (ed), *War*, Oxford University Press, Oxford, 1994, pp. 134–39.

72 For discussion of the importance of these non-combatant missions, see I Wing, *Refocusing Concepts of Security: The Convergence of Military and Non-military Tasks*, Land Warfare Studies Centre, Canberra, Working Paper No. 111, November 2000.

children are actually sent into potential combat situations. And they are apt to view their wounding or death as an outrageous scandal, rather than an occupational hazard.⁷³

In response to the diminishing ability of the great powers to employ their armed forces as a consequence of the need to minimise casualties, Luttwak examines two 'rather improbable' solutions. Significantly, both solutions involve the use of hired soldiers, one based on the Gurkha model and the other based on the French Foreign Legion.⁷⁴ William Shawcross has also argued that the United Nations requires a military capability, noting that a force of '... 5000 well-led soldiers could have saved the lives of thousands of Tutsi victims of the Rwanda genocide in 1994'.⁷⁵

The casualties suffered by Coalition forces in Iraq and Afghanistan have proven both painful for their families and politically difficult for their governments. As a result, casualty minimisation is now a feature of modern armed conflict. ADF troops operating in Iraq, for example, were constrained by orders that placed so-called 'force protection' above the requirement to achieve any given mission. PMC are no less reluctant to suffer casualties, but their losses are less visible to the general public. Robert Young estimates that, by the spring of 2006, the toll of US PMC killed in Iraq had reached 314, a figure that has continued to rise.⁷⁶

Fifth, PMC are generally not constrained by formal military tactics, techniques and procedures. For this reason, they may be more capable of achieving strategic results with relatively small tactical forces. Some examples of this at the tactical level include the successful motorised charges of Hoare and Callan while, at the operational level, EO used helicopters to dominate entire provinces. While more traditional military doctrine tends to frown on these risky techniques, PMC are able to innovate and may complete their missions far more efficiently.

Sixth, relative perceptions of insecurity are increasing and, as a result, security organisations are proliferating. Martin van Creveld predicts that low intensity conflict will eventually replace traditional inter-state conflict and that the task of defending

73 E N Luttwak, 'Where are the Great Powers? At Home with the Kids', *Foreign Affairs*, Vol. 73, No. 4, July/August 1994, p. 25.

74 *Ibid.*, p. 28.

75 W Shawcross, 'In Praise of Sandline', *The Spectator*, 1 August 1998, p. 16.

76 R Young, *Licensed to Kill: Hired Guns in the War on Terror*, Crown, New York, 2006, p. 339.

society will increasingly fall to security firms rather than regular armed forces.⁷⁷ Writing in the late 1990s, Alvin and Heidi Toffler foresaw increased opportunities for mercenaries, including more contracts with the United Nations:

Why not, when nations have already lost the monopoly of violence, consider creating volunteer mercenary forces organised by private corporations to fight wars on a contract-fee basis for the United Nations—the Condottieri of yesterday armed with some of the weapons, including non-lethal weapons, of tomorrow?⁷⁸

Seventh, and most importantly, the Global War on Terror required sustained and large-scale military operations in war zones without recourse to mass mobilisation or conscription to augment national armed forces. This operating environment was ideal for the potential capabilities of PMC. Entrepreneurial former soldiers responded by creating PMC and bidding for the wide range of lucrative contracts on offer.

⁷⁷ M van Creveld, *The Transformation of War: The Most Radical Reinterpretation of Armed Conflict Since Clausewitz*, The Free Press, New York, 1991, pp. 205–07.

⁷⁸ A Toffler and H Toffler, *War and Anti-War: Making Sense of Today's Global Chaos*, Warner Books, London, 1995, p. 281; See also S Roggeveen, 'The Case for the Mercenary Army', *Australian Defence Force Journal*, September–October 1997, pp. 50–53.

Part Two – Issues

The use of PMC in military operations engenders a wide range of related issues. Part Two of this paper discusses these under the broad banners of national armed forces; reputation and reliability; the laws of armed conflict; national laws and accountability; and command, control and interoperability.

National armed forces

The employment of PMC poses nine main challenges to the role of national armed forces within the international system. The first of these challenges involves the fact that PMC erode the nation-states' traditional monopoly over the use of violence which was established at the Treaty of Westphalia. Private corporations may choose to operate outside the bounds of international law and may be less accountable to such laws than sovereign governments.

Second, PMC may provide services to transnational corporations that act in the interests of their shareholders rather than the interests of a particular nation. They may also develop linkages to important elements of national economies, such as mining interests, and exert undue influence over the host government.

Third, PMC may be employed by sovereign governments in preference to national forces in order to avoid the requirement for governmental scrutiny.

Fourth, the opportunities provided by employment with PMC may lead to an accelerated loss of specialists from national armed forces. This may become particularly problematic if those specialists possess valuable and highly prized skills, a trend already visible as special forces personnel are targeted by PMC. Peter Singer claims that, by 2008, there were more *former* soldiers from the British SAS working in Iraq than men currently serving in the Regiment.⁷⁹

Fifth, history shows that PMC may be employed both to overthrow a legitimate government and to support an illegitimate government. The difficulty of assigning

79 P Singer, *Corporate Warriors: The rise of the privatised military industry*, updated edition, Cornell University Press, Ithaca, 2008, p. 255.

terms such as *legitimacy*, particularly in the third world, means that this issue can only be resolved according to the interests of a particular state on a case-by-case basis.

Sixth, PMC may control or suppress conflict in a state, but may not resolve the fundamental issues which caused that conflict. PMC may also be contracted to act against legitimate desires for self-determination or even revolution.

Seventh, PMC may not wish to completely resolve conflict, as to do so would remove the requirement for further contracts.⁸⁰ A tension may exist between the need to provide efficient services to the host country yet retain a lucrative contract.

Eighth, PMC may disregard the laws of war and perpetrate human rights abuses. The Blackwater scandal is often cited as evidence of the potential for such activity. PMC troops, like all soldiers, require good leadership and training to remove the temptation to misuse their power.⁸¹

Ninth, the loyalty and willingness for self-sacrifice espoused by PMC troops may be less than that of national armed forces. Leading military philosopher General Sir John Hackett wrote in the 1980s of the ‘unlimited liability’ of military service—a pointed reference to the fact that getting killed may actually be part of the job. He questioned the level of such ‘liability’ among PMC troops:

A man will suffer great inconvenience and hardship for pay, and inflict a great deal more of it on other people. Men have often been known to kill others for money, but the cases where they will sell their own lives for cash alone are, I imagine, exceedingly rare.⁸²

Reputation and reliability

PMC personnel are motivated by relatively high remuneration, the desire for adventure and higher callings such as patriotism. Higher remuneration is one of the primary reasons for disquiet about the operations of the PMC. Yet, as Michael Walzer insists, there is no clear difference between troops from national armed forces and hired troops ‘who sell their services on the open market’.⁸³ The all-volunteer forces

80 It is generally accepted that this occurred during the Nigerian Civil War of 1967–1970.

81 G S Thomas, *Mercenary Troops in Modern Africa*, Westview Press, Boulder, 1984, pp. 51–52, 65–67.

82 J Hackett, *The Profession of Arms*, Book Club Associates, London, 1983, p. 52.

83 M Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, Penguin Books, Ringwood, Victoria, 1977, p. 27.

of Western nations rely heavily on advertising their salaries to attract recruits, and national armed personnel receive appropriate remuneration for their services and increased allowances when they deploy on active service. The level of remuneration is thus a dubious reason for the condemnation of hired soldiers. Anthony Mockler argues that:

So strong has this almost instinctive feeling become that to be a mercenary is in itself immoral that it is generally forgotten how comparatively recent and illogical this sentiment is.⁸⁴

A more compelling reason for the general disparagement of PMC stems from their ability to support foreign causes. Killing is generally regarded as wrong unless justified by the achievement of a greater good. This partially explains why the foreigners of the International Brigade during the Spanish Civil War who fought to oppose fascism gained popular approval. It also explains why hired soldiers willing to fight for *anybody* are viewed with revulsion.

But what of personnel from national armed forces who are sent on operations which they may not fully understand, including operations to support questionable regimes? These soldiers must perform their duty in accordance with their orders or face prosecution. It thus follows that it is not the level of personal commitment that underlies the problematic issue of hired soldiers. Rather, it is the legality of the activity under national and international law. This is why PMC troops who operate alongside Coalition forces in Iraq and Afghanistan are regarded more favourably. Experience gained in these campaigns demonstrates that, as long as they operate within the accepted laws of war, PMC troops will not earn automatic condemnation. Rather, they have gained a degree of general acceptability for reasons such as their frequent incidence of prior service with the national armed forces they support, and the fact that they are operating in concert with the Coalition.

A number of critical analyses of the PMC industry have been published that point to the lack of industry regulation as one of its main weaknesses.⁸⁵ One apparent response to this criticism was the formation in 2001 of a PMC trade association, the International

⁸⁴ Mockler, *The New Mercenaries*, p. 7.

⁸⁵ These analyses include: Scahill, *Blackwater*; Young, *Licensed to Kill*; Fainaru, *Big Boy Rules*; and G Schumaker, *A Bloody Business: America's War Zone Contractors and the occupation of Iraq*, Zenith Press, St Paul, 2006.

Peace Operations Association (IPOA). The IPOA's mission is to raise the standards of the 'peace and stability operations industry' and its code of conduct covers human rights, transparency, accountability, clients, safety, personnel, insurance, control, ethics, rules for the use of force, support for international organisations, arms control, partner companies, application and enforcement.⁸⁶ IPOA provides staunch support for the PMC industry and represents a broad membership of mainly US PMC. Yet, even in its infancy, the association has had to publicly distance itself from the problematic reputations of companies such as Blackwater. Blackwater has, in turn, sought to rebrand itself with the new corporate name of 'Xe' (pronounced 'zee').⁸⁷ The British equivalent of IPOA, the British Association of Private Security Companies (BAPSC), was formed in 2006 and aims to promote and regulate UK firms that 'provide armed defensive security services'.⁸⁸ Australia has no counterpart association, although some Australian PMC are members of IPOA and maintain links with BAPSC.

Laws of Armed Conflict

The Laws of Armed Conflict, including the Geneva Conventions, were generally silent on issues of mercenarism until the adoption of the Additional Protocols to the Geneva Conventions in 1977. One early exception, however, covered the violation of the principle of neutrality, as defined in Article 4 of the 1907 Hague V Convention, by the active recruitment of mercenaries.⁸⁹ Another exception arose in the Security Council resolution to remove all mercenaries from the Congo in 1961, including the UN troops deployed against 'les affreux'. The UN General Assembly also resolved to condemn the

86 See International Peace Operations Association (IPOA) website: <<http://www.ipoaonline.org>>.

87 D Hedgpeth, 'Blackwater sheds name, shifts focus', *The Washington Post*, 14 February 2009, <<http://www.washingtonpost.com/wp-dyn/content/article/2009/02/13/AR2009021303149.html>> accessed 5 January 2010..

88 See British Association of Private Security Companies (BAPSC) website: <<http://www.bapsc.org.uk>> accessed 5 January 2010..

89 H McCoubrey and N D White, *International Law and Armed Conflict*, Dartmouth, Aldershot, England, 1992, p. 300; see 'Convention Respecting the Rights and Duties of Neutral Powers and Persons in the Case of War on Land', Hague, 18 October 1907, International Law Concerning the Conflict of Hostilities: Collection of Hague Conventions and Some Other Treaties, International Committee of the Red Cross (ICRC), Geneva, Switzerland, 1992, pp. 143–48.

use of mercenaries to fight movements for national liberation and independence in 1968, 1969, 1970 and 1973.⁹⁰

In 1977, Article 47 of Additional Protocol I denied mercenaries the rights of combatants and prisoners of war.⁹¹ The aim of the Article was to sanction the criminal prosecution of those persons identified as mercenaries, although this has had little effect in the years since its promulgation. The definition of mercenaries applies only to persons recruited for a particular armed conflict rather than non-specific long-term contracts. The definition also applies only to persons taking part in hostilities rather than those acting as advisers, technicians or trainers. Furthermore, only persons desiring private gain, as opposed to those acting for ideological reasons, are included in the definition. Finally, the definition applies only to those persons who are not members of the armed forces of a party to the conflict. This is a relatively easy clause to circumvent through the signing of enlistment papers or special appointment.⁹² Geoffrey Best comments acidly that ‘any mercenary who cannot exclude himself from this definition deserves to be shot—and his lawyer with him’.⁹³

The applicability of the Article is further diminished because it does not apply to civil wars, one of the more frequent reasons for mercenary employment, although it does apply to mercenaries involved in operations intended to overthrow legitimate governments. Some jurists argue that Article 47 violates other aspects of Protocol I and that its denial of fundamental rights to mercenaries is ‘inhumane’.⁹⁴ The denial of protection by the Protocols may also encourage mercenaries to disregard the other protective articles of the Geneva Conventions.⁹⁵ Given the many qualifications surrounding the definition of mercenaries it is not surprising that the *Handbook on*

90 Burchett and Roebuck, *The Whores of War*, pp. 231–33.

91 ‘Mercenaries’, Article 47, Protocol I, Protocols Additional to the Geneva Conventions of 12 August 1949, Geneva 1977, ICRC, Geneva, Switzerland, 1987, p. 34.

92 The PNG government sought to circumvent this article in appointing EO mercenaries ‘special constables’. Shearer, *Private Armies and Military Intervention*, pp. 16–18; Kwakwa, *The International Law of Armed Conflict*, pp. 107–27.

93 G Best, *Humanity in Warfare: The Modern History of the International Law of Armed Conflict*, Weidenfeld and Nicholson, London, 1980, pp. 83, 328 (also cited in Kwakwa, *The International Law of Armed Conflict*, pp. 111–12).

94 See example in I Detter de Lupis, *The Law of War*, Cambridge University Press, Cambridge, 1987, p. 118; and Guy Roberts cited in Kwakwa, *The International Law of Armed Conflict*, p. 124.

95 See interviews with mercenaries in S Neales, ‘Dogs of War Go To Hell’, *The Age*, 30 April 1993, Dow Jones Interactive.

the Law of War for Armed Forces, published by the International Committee of the Red Cross (ICRC), makes no distinctions on the status of mercenaries.⁹⁶

The Organisation of African Unity (OAU) passed resolutions condemning mercenarism in 1967, 1970, 1971 and 1972. In 1977 the OAU passed the *Convention for the Elimination of Mercenarism in Africa*, which defines mercenarism as a crime. In 1989, the United Nations sponsored the *International Convention Against the Recruitment, Use, Financing and Training of Mercenaries*, which defines mercenarism as an offence 'of grave concern'.⁹⁷ Both definitions are more extensive than that applied in Article 47. The UN Mercenary Convention employs the following definition:

1. A mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) Is not a member of the armed forces of a party to that conflict; and
- (e) Has not been sent by a state which is not a party to that conflict on official duty as a member of its armed forces.

2. A mercenary is also a person who, in any other situation:

- (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a state; or
 - (ii) Undermining the territorial integrity of a state;

⁹⁶ *Handbook on the Law of War for Armed Forces*, ICRC, Geneva, Switzerland, 1987.

⁹⁷ Burchett and Roebuck, *The Whores of War*, pp. 233–40; *Convention for the Elimination of Mercenarism in Africa*, Libreville, 3 July 1977, University of Minnesota Human Rights Library, <<http://www.umn.edu/humanrts/instree/1977e.htm>> accessed 12 November 1998; *International Convention Against the Recruitment Use, Financing and Training of Mercenaries*, 4 December 1989, University of Minnesota Human Rights Library, <<http://www.umn.edu/humanrts/instree/1989a.htm>> accessed 12 November 1998.

- (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- (c) Is neither a national nor a resident of the State against which such an act is directed;
- (d) Has not been sent by a State on official duty; and
- (e) Is not a member of the armed forces of the State on whose territory the act is undertaken.

In 1997, the Special Rapporteur of the Commission of Human Rights reported to the Secretary-General on mercenarism.⁹⁸ He noted that, while mercenarism was to be deplored, international and domestic legislation contained gaps and loopholes which allowed it to occur.⁹⁹ The Rapporteur added that PMC were particularly difficult to categorise as mercenaries under extant legislation.¹⁰⁰

Despite the UN's rejection of mercenarism, 2er Rep of the French Foreign Legion was deployed with the UN peace operation in Lebanon in 1982. It is also noteworthy that some respected commentators have called for the United Nations to raise a standing peacekeeping force.¹⁰¹ While, if such a 'UN armed force' is raised it would not be described as 'mercenary', the force would probably fit the definition used in this

98 *Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination*, Commission on Human Rights Resolution 1995/5, 17 February 1995, <<http://www.unhchr.ch/html/menu4/chrres/995.htm>> accessed 12 November 1998.

99 'Report on the Question of the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, submitted by the Special Rapporteur of the Commission on Human Rights', Annex to *Right of Peoples to Self-Determination: Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination*, Note by the Secretary-General, General Assembly, 52nd Session, Agenda Item 111, 16 October 1997, <<http://www.unhchr.ch/html/menu4/garep/52ga495.htm>> accessed 12 November 1998.

100 *Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Rights of Peoples to Self-Determination*, General Assembly Resolution 52/112, 12 December 1997, <<http://www.unhchr.ch/html/menu4/gares/gares112.htm>> accessed 12 November 1998.

101 See B Boutros-Ghali, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping', report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, United Nations, New York, 1992, pp. 26–27, 30–31; B Boutros-Ghali, 'An Agenda for Peace: One Year Later', *Orbis*, Vol. 37, No. 3, Summer 1993, pp. 323–32; and J Sanderson, *Intervening for Peace: The Question of Standing Forces for the United Nations*, Occasional Paper No. 17, Australian Institute of International Affairs, School of Australian and International Studies, Deakin University, Geelong, Victoria, 1996, pp. 4–9.

paper if it is multinational and controlled by the United Nations, or consists of national forces which are no longer directly controlled by the contributing nations.

In 2004, the ICRC announced that it would expand its contacts with the PMC industry, recognising its role in conflict zones. The Red Cross also reaffirmed its stance that contractors, including armed guards, are civilians entitled to the protection of international humanitarian law.¹⁰² In September 2008, the ICRC finalised the *Montreux Document on Private Military and Security Companies*, also referred to as the 'Swiss Initiative'. This initiative was intended to promote respect for international humanitarian law, and the signatories acknowledged their duty to control PMC. Australia, the United States and United Kingdom were among the original seventeen national signatories. A further twenty-four countries have since signed.¹⁰³

Whether the UN's legal definition can be strictly applied to today's PMC in the GWOT is debatable—but these PMC have already achieved *de facto* legal status. PMC generally assert that they perform either supporting roles or security functions, meaning that they have no intention of 'fighting in an armed conflict'. Furthermore, the operations in which they participate carry the official sanction of the United Nations and are therefore not 'a concerted act of violence aimed at overthrowing a government'. Thus, PMC logically assert that they do not fit the UN's definition of mercenaries. The governments participating in Coalition operations in Iraq and Afghanistan apparently agree with this interpretation as they either have contracts with PMC to support their operations or have allowed their citizens to be employed by PMC. Indeed, the United Nations and its agencies also utilise the services of PMC.¹⁰⁴ Nonetheless, all armed PMC personnel run the risk of being regarded as mercenaries if captured—and thus forfeiting the legal rights of recognised combatants or non-combatants.

102 'The ICRC to expand contacts with private military and security companies', 4 August 2004, <<http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/63HE58>> accessed 5 January 2010.

103 ICRC, *Montreux Document on Private Military and Security Companies* (also referred to as the 'Swiss Initiative'), Bern, 17 September 2008, <[http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/\\$FILE/Montreux-Documents-eng.pdf](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/montreux-document-170908/$FILE/Montreux-Documents-eng.pdf)> accessed 5 January 2010.

104 The author observed this first hand while serving as a UN observer in East Timor in 2000.

National laws and accountability

At the national level, mercenarism has rarely attracted significant legal attention. For this reason, PMC generally operate outside the framework of legal accountability.

In the United States, the *Neutrality Act* was originally enacted in 1794 and revised in 1937 following the Spanish Civil War. The Act prohibits the recruitment of mercenaries on US territory. During the 1970s, accepting mercenary employment was widely believed to result in the loss of US citizenship although, under contemporary US law, mercenary activity is not a crime unless other criminal or international laws are breached.¹⁰⁵ Prior to his election, President Barack Obama promised to tighten control on the operations of PMC. His administration has since determined that US PMC operating in conflict zones must adhere to the Uniform Code of Military Justice.¹⁰⁶

In the United Kingdom, the *Foreign Enlistment Act* of 1870 was originally intended to prevent British subjects from jeopardising British foreign policy, and arose from the difficulty of British neutrality during the American Civil War rather than as a means of prohibiting mercenarism. There have been no convictions under the Act, suggesting that the issue has been largely avoided.¹⁰⁷ Following the prosecution of the British mercenaries in Angola in 1975, Lord Diplock told the British Government that mercenarism *per se* should not constitute a crime, although the recruitment of mercenaries to fight in foreign conflicts may be considered so.¹⁰⁸ Mockler argues that the *Neutrality Act* and *Foreign Enlistment Act* are virtually dead letters.¹⁰⁹ Tony Geraghty agrees, pointing out that:

Such inactivity derives from the fact that some freelance operators can be very useful to government from time to time, and that this consideration outweighs the occasional embarrassment.¹¹⁰

105 Hoare, *Congo Mercenary*, p. 241; and Kwakwa, *The International Law of Armed Conflict*, pp. 116–18.

106 N Hodge, 'PSCs become US election issue', *Jane's Defence Weekly*, 12 March 2008, p. 9.

107 Burchett and Roebuck, *The Whores of War*, pp. 184–96; Shearer, *Private Armies and Military Intervention*, p. 20.

108 Kwakwa, *The International Law of Armed Conflict*, pp. 118–19.

109 Mockler, *The New Mercenaries*, p. 356.

110 Geraghty, *Who Dares Wins*, p. 133.

In 2002, the British Government released a Green Paper, *Private Military Companies: Options for Regulation*. The paper accepted that PMC had become a fact of life and examined a range of related policy options including a licensing scheme for PMC.¹¹¹ Such a scheme has not been officially implemented and the industry has since been encouraged by the British Foreign and Commonwealth Office to self-regulate under the auspices of BAPSC.¹¹²

The *Australian Crimes (Foreign Incursions and Recruitment) Act 1978* prohibits Australian citizens and residents of Australia from hostile activity in a foreign state for the purpose of overthrowing the government or engaging in armed hostilities. The Act also prohibits the stockpiling of arms, unauthorised recruitment, military training and collecting of money to support foreign incursions. The Act does not, however, apply to those serving in the armed forces of a foreign government (this was amended in 2002 to exclude armed forces that cooperate with terrorist organisations such as the former Taliban government of Afghanistan). Contravention of the Act attracts penalties of up to fourteen years' imprisonment.¹¹³

The Act was originally framed to thwart the activities of Australian members of the Croatian opposition to the Tito regime in Yugoslavia. It has since been employed to prosecute persons opposed to the legitimate governments of the Comoros Islands, Indonesia, the Seychelles and Cameroon. Ten men were convicted under the Act between 1981 and 1998, receiving sentences of up to four years.¹¹⁴ In 1987 the Act was invoked in the unsuccessful prosecution of David Everett, a former Australian SAS soldier who had fought with the Karen National liberation Army in Burma.¹¹⁵

111 Foreign and Commonwealth Office, *Private Military Companies: Options for Regulation*, The Stationery Office, London, 12 February 2002.

112 A Bearpark and S Schulz, 'The Future of the Market' in S Chesterman and C Lehnardt, *From Mercenaries to Market: The Rise and Regulation of Private Military Companies*, Oxford University Press, Oxford, 2007, pp. 239–50; see also the BAPSC website at: <<http://www.bapsc.org.uk>> accessed 5 January 2010.

113 An Act Relating to Incursions into Foreign States and Recruitment for Service in Armed Forces in Foreign States, Crimes (Foreign Incursions and Recruitment) Act 1978, 13 of 1978. *Report on the Clauses of the Crimes (Foreign Incursions and Recruitment) Bill 1977*, Parliamentary Paper No. 67/1977, Commonwealth Government Printer, Canberra, April 1977.

114 See Annex A for details.

115 See D Everett, *Shadow Warrior: From the SAS to Australia's Most Wanted*, Penguin Books, Camberwell, 2008, pp. 179–88.

The recruitment of personnel in Australia is permitted under the Act if specifically authorised by the Attorney-General. One example of legal recruitment saw the employment of Australian pilots to fly helicopters for the PNGDF at Bougainville. This decision was later complicated by allegations that the helicopters had been used to attack villages and dump dead bodies in the sea.¹¹⁶ The pitfalls of anti-mercenary legislation are illustrated in the infrequent invocation of the Act. The Act was not invoked, for example, to prosecute Australian mercenaries who were recruited into the former Rhodesian, South African and Yugoslavian armed forces. Similarly, despite some legal opinions to the contrary, the Australian Government decided that the Act could not be used to charge David Hicks over his activities in Afghanistan.¹¹⁷

More restrictive measures by governments are possible, particularly among nations that are sensitive to accusations of neo-colonialism. In 1998, South Africa passed *The Regulation of Foreign Military Assistance Act*, providing the South African Government more control over EO contracts, albeit little effective control over mercenary recruitment.¹¹⁸ In 2006, this law was replaced by *The Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act*, which requires the licensing of all South African PMC and PMC employees in conflict zones.¹¹⁹ This Act has had little impact to date.

In Iraq, PMC operated in a 'legal twilight' from 2004 with the promulgation of Coalition Order 17 which provided PMC 'immunity' from local prosecution, full access to Coalition military facilities, and authorisation to use deadly force. This changed

116 P Cronau, 'Another Facet of the PNG Debacle', *The Canberra Times*, 14 April 1997, p. 9; Amnesty International, <<http://www.amnesty.org/ailib/aipub/1997/ASA/33400197.htm>> accessed 12 November 1998; P Hanning, 'Rumours Fly Over Choppers', AAP Report No.a2545, 10 April 1997; N Sharp, 'Bougainville Blood on Our Hands – Australia's Role in PNG's War', *AidWatch*, March 1997, <<http://www.toysatellite.com.au/aidwatch/reports/bougain.htm>> accessed 12 November 1998.

117 G Williams and D Hovell, *Legal Opinion on Whether David Hicks Can be Tried in Australia*, Faculty of Law, University of New South Wales, 24 June 2005, <<http://www.gtcentre.unsw.edu.au/news/docs/davidHicksAdvice.pdf>> accessed 5 January 2010.

118 Shearer, *Private Armies and Military Intervention*, pp. 54–55; D Isenberg, 'Verbal Clashes Over South African Mercenary Law', *The Associated Press*, <http://nado.net/newsroom/ntn/world/101497/world6_23118.html>; 'Comments by Executive Outcomes on the Regulation of Foreign Military Assistance Bill', EO Press Release, <<http://www.eo.com/presrel/presrel.idc>> accessed 12 November 1998.

119 Republic of South Africa, 'The Prohibition of Mercenary Activities and regulation of certain Activities in Country of Armed Conflict Act', *Government Gazette*, No. 26 of 2006, 16 November 2007, <<http://www.info.gov.za/view/DownloadFileAction?id=75729>>. accessed 5 January 2010.

in mid-2008 when the order was rescinded and Iraq gained the sovereign right to prosecute PMC under its own laws. The negotiation of the Status of Forces Agreement for Coalition forces in Iraq was further complicated by the vexed question of PMC immunity.¹²⁰ As a result, PMC personnel facing charges in Iraq now depart the country quickly to avoid prosecution and generally move on to the other major GWOT conflict zone, Afghanistan, which has virtually no legal system.

Command, control and interoperability

PMC provide a wide range of important services to national armed forces on operations. The 2006 *US Quadrennial Defense Review* included 'contractors' as part of the US Department of Defense 'Total Force'.¹²¹ The 2009 Australian Defence White Paper follows a similar approach.¹²² Many functions are now so reliant on contractors for their performance that modern military forces would find it very difficult to deploy for prolonged periods without them. Peter Singer argues that:

The US government is in a terrible predicament today ... It has over-outsourced to the point that it is unable to imagine carrying out its most basic operations without them.¹²³

As modern military forces wrestle with the need to operate with greater efficiency and economy, this situation is unlikely to be reversed and PMC will most likely become an enduring element of modern conflict. The major challenges for national armed forces seeking to deal with the PMC that support them relate to the issues of command, control and interoperability.

120 Coalition Provisional Authority, Order Number 17, 'Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq', 27 June 2004; J Hider, 'Private guards to lose Iraq immunity', *The Australian*, 4 July 2008, p. 9.

121 Armstrong, *War PLC*, p. 90.

122 Department of Defence, *Defending Australia in the Asia-Pacific Century: Force 2030*, <http://www.defence.gov.au/whitepaper/docs/defence_white_paper_2009.pdf> accessed 5 January 2010, pp. 91–92.

123 P Singer, *Can't Win With 'Em. Can't Go To War Without 'Em: Private Military Contractors and Counterinsurgency*, Foreign Policy at Brookings, Policy Paper No. 4, September 2007, p. 17.

Command and control are problematic areas for national armed forces operating alongside PMC. This is primarily because PMC rarely operate under command of military forces, preferring instead to operate under less restrictive arrangements. While they are willing to share base facilities in conflict areas such as Iraq, they resist requirements to comply with military regulations and practices.¹²⁴

Control operates at two levels, the first of which incorporates legal accountability, as has been discussed. The second level concerns the means by which PMC are held accountable for the provision of contracted services.¹²⁵ The Vice-Chief of the ADF argues for 'whole-of-nation buy-in'—including the use of contractors—and recommends that the ADF become a 'smart buyer' of contracted services.¹²⁶ The main problem with contract management is that some PMC seek to maximise profit by trimming expenditure. Accounts from Iraq are replete with examples of this practice. Some PMC seek to save money by contracting unskilled personnel as Tony Geraghty remarks:

The word on the Hereford SAS circuit was that genuine professionals walked away from one contract in Iraq rather than risk serving alongside four recently retired postmen.¹²⁷

Interoperability provides another challenge to national armed forces. PMC are not formed units that can be assigned military tasks unless these are stipulated in their contracts. PMC operate under completely independent chains of command and their leadership and management operate under corporate arrangements. PMC use separate radio frequencies and separate intelligence systems to those of national armed forces.

As a further complication, PMC operate under specific operational directives and rules of engagement based on their contractual responsibilities and their inalienable rights to self-defence. PMC are generally willing to coordinate their defensive posture

124 Based on the author's experience while serving as Base Security Officer at Camp Slayer, Baghdad, in 2004–2005 and on the accounts of others with similar responsibilities.

125 See T Robertson and C Durrant, 'PMC Development in Australia: Dealing With Reality', *ATACS Battlespace Superiority*, 31 August 2008, <<http://www.atacs.com.au>> accessed 5 January 2010; Singer, 'Outsourcing War'; and M Thompson, *War and Profit: Doing business on the battlefield*, Australian Strategic Policy Institute, Canberra, March 2005.

126 K Gillespie, 'Stabilisation operations deliver effects to win: The importance of effective, immediate and responsive reconstruction', *Australian Journal of Multi-Disciplinary Engineering*, Vol. 6, No. 2, 2009, pp. 146–47.

127 Geraghty, *Guns for Hire*, p. 21.

as part of overall base security as long as this does not affect the terms of their contract, but are generally unable to commit to other activities. They will seldom agree to undertake any combined security response and this leaves national armed forces to bear the burden for all responses to enemy action, including battlefield recovery, clearing patrols and counter-attacks. This can lead to friction between national armed forces and PMC over the perception that PMC are not pulling their weight. This friction is often exacerbated as PMC personnel are denied access to military facilities or national armed forces' resources are diverted to assist PMC units. Despite such irritants, good working relationships can be developed through effective liaison, particularly at a local level.¹²⁸

128 Based on the author's experience while serving as Base Security Officer at Camp Slayer, Baghdad, in 2004–2005 and on the accounts of others with similar responsibilities.

Part Three – Conclusion

PMC and their mercenary antecedents are an enduring feature of international armed conflict and their importance is increasing. The value of the global market for ‘high-end protective security’ is estimated at US\$2.5 billion per annum.¹²⁹ David Kinsey estimates that the overall PMC industry generates US\$100 billion in annual revenue (although the IPOA claims a lower figure of US\$50 billion).¹³⁰ While these amounts are small in comparison to overall expenditures on national armed forces, they remain large in corporate terms. Their size illustrates the power and significance of international security contracting.

The increasing prevalence of PMC brings positives and negatives for national armed forces. On the positive side, they offer a wide range of capabilities for military operations. They are particularly useful for enabling functions that are beyond the scope of military forces and providing surge capacity for functions that are in limited supply. The negatives include the counter-productive effects of criminal or unnecessarily brutal behaviour by PMC personnel. David Isenberg argues that:

Given the historical longevity of mercenaries, it seems foolish to try to prevent them. A more sensible view is that mercenaries are like other weapons of war in that they may be used during armed conflict and, as such, deserve regulation.¹³¹

Recommendations

Australia deals with PMC in its military operations on a daily basis. In order to maximise the benefits of these relationships, this paper offers six recommendations:

129 N Hodge, ‘High risk, high return?’, citing an industry survey conducted by ArmorGroup, *Jane’s Defence Weekly*, 9 July 2008, pp. 24–27.

130 C Kinsey, *Corporate Soldiers and International Security: The Rise of Private Military Companies*, Routledge, 2006, p. 2; discussions between Doug Brooks, President of IPOA, and the author, 19 August 2008.

131 Isenberg, *Soldiers of Fortune Ltd*, p. 14.

1. International Register of PMC. The creation of an international register of all PMC would promote transparency of the capability and performance of the industry. The United Nations is the logical international organisation to create and maintain this register, although the UN Convention on Mercenarism may require amendment to allow this to occur. Increased contacts between the ICRC and PMC indicate that the United Nations may already be moving in this direction.

2. Laws of war and PMC. In conjunction with these measures, the laws of war should be clarified to remove existing discrimination against PMC and reinforce the responsibilities of PMC under international humanitarian law. Such international regulation of PMC will reduce their vulnerability to criminal and counter-productive behaviour. PMC which operate in accordance with the laws of war should be viewed as useful elements of the ‘total force’ of a country.

3. Identification of inherently governmental functions. Countries should identify which functions conducted by armed forces are deemed to be ‘inherently governmental’—and must therefore be performed only by national armed personnel—and which can be contracted out. Offensive operations are most readily identified as inherently governmental. The status of many other functions such as base security and battlefield transport is less clear. In association with this process, countries should identify which functions need to be performed by citizens and which can be provided by contracted personnel from allied countries, or from any country.

4. Effective contract management. PMC are businesses that seek to make a profit, an orientation that may be at odds with military culture and ethos. Effective contracts and good liaison present the best tools to manage the relationship between national armed forces and PMC. Skills in contract management are an important requirement for national armed forces.

5. Shared training and education. As PMC perform key functions within military operations, they should be included in the planning process as early as possible. The requirement for competitive tender practices will mean that this is not always possible, leading to *ad hoc* arrangements for each operation. One way to counteract this effect is the creation of opportunities for shared training and education between national armed forces and PMC.

6. Military career path. PMC offer opportunities for former military personnel to utilise their skills while receiving remuneration based on prevailing market rates.

The regulation of the PMC industry will encourage it to direct its business towards legitimate military operations. Well-managed PMC which adhere to the requirements of all national and international laws should be recognised as part of a normal career path for some military professionals.

Annex A

Convictions for offences prosecuted under the

*Australian Crimes (Foreign Incursions and Recruitment) Act, 1978*¹³²

Date/ Place	Offence	Sentence
October 1981, Sydney	Being present at a training assembly of a group of Croatians who were opposed to the lawful government of Yugoslavia. Also contributed arms, ammunition and training texts.	4 years with a minimum of 12 months.
April 1984, Perth	Joining an association preparing to undertake hostile activities in the Comoros Islands with a view to overthrowing the new ruler. The plan involved the use of a yacht although it never left Australia.	2 years with a minimum of 8 months.
June 1984, Perth	Receiving money for an association preparing to undertake hostile activities in the Comoros Islands with a view to overthrowing the new ruler. He received 116,500 Deutsche Marks in Singapore.	18 months with a minimum of 6 months.
June 1984, Perth	Undertaking preparatory acts (two trips to the Comoros Islands) on behalf of an association proposing to undertake hostile activities there with a view to overthrowing the new ruler. It has been suggested that the motivation of this offender was mercenary while the motivation of the two previous offenders was political.	18 months with a minimum of 6 months.

¹³² This table is based on information provided by the Criminal Law Division, International Branch, Attorney-General's Department; and the annual reports of the Commonwealth Director of Public Prosecutions.

March 1987, Sydney	Having been approached by a Papua New Guinea national acting for the OPM, recruiting one person to serve with an armed force in Irian Jaya on the pretext of 'feasibility studies' for which he was paid.	12 months with a minimum of 6 months.
May 1988, Sydney	Preparatory acts in connection with a proposal to overthrow the government of the Seychelles. He attended meetings, devised plans and made a reconnaissance trip to the Seychelles. It has been suggested that his motive was mainly political.	18 months with a minimum of 12 months.
March 1991, Innisfail, Queensland	An Indonesian national born in Irian Jaya and living in Australia purchased and stored six rifles and 2000 rounds of ammunition with a view to transporting them to the OPM. Convicted of preparatory acts and of keeping arms and munitions.	9 months with a minimum of 3 months.
February 1996, Brisbane	Undertaking preparatory acts by attempting to make arrangements for the purchase of \$1.5 million in arms and ammunition for use against the government of Cameroon.	30 months with a minimum of 8 months.
August 1998, Cairns, Queensland	Two Indonesian nationals born in Irian Jaya and living in Papua New Guinea at the time of the offences purchased arms and munitions on Yam Island in the Torres Strait with a view to transporting them to the OPM.	5 months.

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